

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In the matter of: C.T.,)	
Petitioner)	
)	
and)	CAUSE NO. 0911109-67
)	
The Indiana High School Athletic Association (IHSAA),)	
Respondent)	
)	
Review Conducted Pursuant to)	Closed Hearing
I.C. 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

Petitioner is a junior currently attending Cathedral High School (Cathedral) in Indianapolis, Indiana in the Office of Catholic Education. He recently transferred from Pike High School (Pike), Metropolitan School District Pike Township, to Cathedral at the beginning of the 2009-10 school year. The change of schools was not associated with a residential move and was not associated with a change of address.

As a freshman and sophomore at Pike, Petitioner participated in athletics as a member of the varsity basketball team and the junior varsity track team. Petitioner last participated in athletics at Pike on February 27, 2009. Petitioner enrolled at Cathedral on August 4, 2009 and began attending Cathedral on August 13, 2009. On August 27, 2009, the Petitioner completed his portion of the Indiana High School Athletic Association's (IHSAA) Transfer Report (Transfer Report). The reasons for the transfer from Pike to Cathedral were provided in a letter submitted with Petitioner's Transfer Report. The letter provided that Petitioner's transfer was due to his parents' concerns that C.T.'s physical safety was being threatened on and off the playing field by some of his teammates.

Cathedral completed its portion of the Transfer Report and signed on August 27, 2009 by Terry Fox recommending Petitioner receive full eligibility due to a hardship. Pike completed its portion of the Transfer Report and it was signed on September 15, 2009, by Stephen Stocker. In its Transfer Report Pike recommended that the Petitioner receive ineligible status under rule 19-4. On October 26, 2009, the IHSAA ruled that under Rule 19-4,¹ Petitioner was athletically ineligible for 365 days after his enrollment at Cathedral.

¹ Respondent has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. (All references are to the 2009-2010 by-laws of Respondent.)

Petitioner appealed the decision of the IHSAA to grant him ineligible status for 365 days from date of enrollment at Cathedral and a review was scheduled for October 8, 2009. On October 20, 2009, the IHSAA Review Committee issued a decision upholding the Commissioner's determination.

APPEAL TO THE CASE REVIEW PANEL

Petitioner, with counsel, appealed to the Indiana Case Review Panel² (CRP) on December 14, 2009. On or about December 18, 2009, the parties were notified of their respective hearing rights. The record from the investigation and review by Respondent was requested and received. The record was copied and provided to each participating member of the CRP. Hearing was set for January 7, 2010, in the offices of the Indiana Department of Education, Indianapolis, Indiana. The parties received timely notice of the proceedings.

On January 7, 2010, the CRP convened.³ Petitioner and his parents appeared in person with counsel Richard Cook. Respondent appeared by counsel Robert Baker. Prior to the hearing, Petitioner submitted four exhibits marked as "P-1; P-2; P-3 and P-4" for identification purposes. Copies were made and provided to Respondent and members of the CRP. Respondent objected to the admission of Petitioner's exhibits P-1; P-2; P-3 and P-4. The CRP admitted the four documents over Respondent's objection.

Testimony was provided under oath or by affirmation. In consideration of the testimony and record, the Case Review Panel makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Petitioner is a seventeen year old junior currently attending Cathedral High School in the Office of Catholic Education in Marion County, Indianapolis, Indiana. He resides with his family in Indianapolis, Indiana in Marion County.
2. Prior to enrolling at Cathedral, Petitioner attended Pike High School in the Metropolitan School District Pike Township in Marion County, Indianapolis, Indiana.
3. On August 4, 2009 the Petitioner enrolled at Cathedral and on August 13, 2009 began attending classes at Cathedral.

² The Case Review Panel (CRP) is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or his designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA when a parent or guardian so requests. Its decision does not affect any By-Law of the IHSAA but is student-specific. In like manner, no by-law of the IHSAA is binding on the CRP. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision by the Respondent. I.C. 20-26-14-6(c)(3).

³ Five members were present: Dr. Thomas Huberty serving as chair over the proceedings, Ed Baker, Christi Bastnagel, Brenda Sebastian, and Matt Rager.

4. On August 27, 2009, the Petitioner completed his portion of the Indiana High School Athletic Association's (IHSAA) Transfer Report (Transfer Report). The reasons for the transfer from Pike to Cathedral were provided in a letter submitted with Petitioner's Transfer Report. The letter provided that Petitioner's transfer was due to his parents' concerns that C.T.'s physical safety was being threatened on and off the playing field by some of his teammates.
5. In August 2007, during his freshman year at Pike, the Petitioner was pushed while on the stairs by another student.
6. During the 2008-09 school year, Petitioner's teammates were overly physical and rough during practices causing Petitioner to fall down after the termination of a play on several occasions. In a basketball "walk through" Petitioner was shoved when he was setting screens on certain players.
7. During a 2008 summer league basketball game in Cincinnati, Ohio, a Pike teammate, who was involved in later incidents at Pike, threatened physical violence toward Petitioner and coaching staff intervened and separated the players.
8. Petitioner's father sent an email to the Pike basketball head coach on January 14, 2009. In the email, Petitioner's father describes his concerns about how Petitioner was utilized on the team. He also states that Petitioner does not feel he will wear a Pike uniform the following school year.
9. In February 2009, Petitioner was accused by his teammates of not showing emotion after a loss at a basketball game to Hamilton Southeastern High School which led to a teammate threatening to hit Petitioner.
10. The next day, Wednesday, February 18, 2009, Petitioner's younger brother told Coach Nunley that he heard that a basketball player, D.L., intended to jump Chandler. Coach Nunley, testified that he talked to D.L. who denied having any intentions of jumping Petitioner.
11. Following another basketball game in February 27, 2009, at Warren Central, Petitioner witnessed fellow teammates throwing chairs in the locker room and one player stated that he would kill Petitioner. Petitioner's father did not allow Petitioner to ride the team bus back to Pike following the incident in the locker room after the Warren Central basketball game due to his concerns for his Petitioner's safety.
12. The following day, Saturday, February 28, 2009, Coach Spoljaric talked to Petitioner's father after Petitioner refused to talk to him on the phone. Coach Spoljaric advised Petitioner's father that there had been problems with Petitioner talking back to the coaches and other players all season and that Petitioner appeared to be distancing himself from the team in the weeks leading up to the Warren Central game.

13. The coach of the boys' basketball team witnessed physical play between Petitioner and other members of the team, and was aware of the incidents in the locker room following the Hamilton Southeastern game and the Warren Central games.
14. On February 26, 2009, Petitioner submitted an application for admission to Cathedral.
15. Petitioner continued to attend Pike without further incident for the remainder of the 2008-2009 school year.
16. On August 4, 2009, Petitioner enrolled as a junior at Cathedral. On August 13, 2009, Petitioner began attending classes at Cathedral.
17. Cathedral completed its portion of the Transfer Report and signed on August 27, 2009 recommending that the Petitioner receive full eligibility due to a hardship however, Cathedral failed to answer the questions about whether the transfer was athletically motivated or the result of the undue influence.
18. Pike completed its portion of the Transfer Report which was signed on September 15, 2009, recommending that the Petitioner receive ineligible status under Rule 19-4 as the transfer was motivated by athletic reasons.
19. On October 26, 2009, the IHSAA ruled that under rule 19-4, Petitioner was athletically ineligible for 365 days after his enrollment at Cathedral.
20. Petitioner appealed the decision of the IHSAA to grant him ineligibility status because of a hardship and denies the transfer was not for athletic reasons. A review was scheduled for October 8, 2009.
21. On October 20, 2009, the Review Committee issued a decision upholding the Commissioner's decision.

CONCLUSIONS OF LAW

1. Although the IHSAA, the Respondent herein, is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are "state action" and for this purpose makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The CRP has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 *et seq.* The CRP has jurisdiction when a parent, guardian, or eligible student invokes the review function of the CRP. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the student. Petitioner has timely sought review. The CRP has jurisdiction to review and determine this matter. The CRP is not limited by any by-law of Respondent and is authorized by statute to uphold, modify, or nullify the Respondent's adverse eligibility determination.

2. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
3. Rule 17-8.1 provides that a hardship exists if the Petitioner can show that strict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule; the spirit of the Rule has not been violated; and there exists in the particular case circumstances showing an undue hardship that would result from enforcement of the Rule. Petitioner fails to show evidence to support a hardship claim under Rule 17-8.1.
4. Even though the CRP was concerned about the threats and aggressive behavior by the Pike basketball team members toward Petitioner, Petitioner failed to show a hardship existed.
5. Rule 19-4 provides that a transfer primarily for athletic reasons includes, but is not limited to: (a) a transfer to obtain the athletic advantage of a superior, or inferior, athletic team, a superior athletic facility or a superior coach or coaching staff; (b) a transfer to obtain relief from a conflict with the philosophy or action of an administrator, teacher or coach relative to athletics; (c) a transfer seeking a team consistent with the student's athletic abilities; (d) a transfer to obtain a means to nullify punitive action taken by the previous school. Petitioner's father expressed his concern as to how Petitioner was utilized on the team. Petitioner indicated he did not wish to play for Pike. The evidence supports a conclusion that the transfer was primarily for athletic reasons.
6. Student athletes who transfer from one school to a new school for primarily athletic reasons or as a result of undue influence will become ineligible to participate in interschool athletics in the new school for a period not to exceed 365 days following the date of enrollment. Based on the foregoing, the IHSAA's determination that Petitioner have ineligibility status for 365 days from the date of his enrollment at Cathedral, or **until August 13, 2010** is upheld.

ORDER

1. The decision of the IHSAA to grant Petitioner ineligible status for 365 days from the date the Petitioner enrolled in the new school is upheld. This was determined by a vote of 5 - 0.
2. The CRP further notes the incorrect dates in the IHSAA decisions as to the date Petitioner gains full eligibility. The record shows two different dates, August 13, 2009 and August 18, 2009, in the two prior decisions on this matter in determining when his ineligibility

would expire. The CRP orders that **the Petitioner will have ineligible status until August 13, 2010 which is 365 days from the first day he attended classes at Cathedral.**

DATE: February 4, 2010

/s/ Dr. Thomas Huberty
Dr. Thomas Huberty, Chair
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.